LIBRARY
SUPREME COURT, U. S.

Office-Supreme Court, U.S.
FILED
JAN 16 1963
JOHN F. DAVIS, CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1962

No. 616

DUNCAN MILLER,

Petitioner,

v.

STEWART L. UDALL, SECRETARY OF THE INTERIOR

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

REPLY BRIEF OF PETITIONER

CHESTER C. SHORE,
902 Warner Building,
Washington 4, D. C.,
Attorney for Petitioner.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1962

No. 616

DUNCAN MILLER,

Petitioner,

v.

STEWART L. UDALL, SECRETARY OF THE INTERIOR

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

REPLY BRIEF OF PETITIONER

I

Respondent has argued that Section 1 of the Mineral Leasing Act is the only section that relates to and shapes the meaning of "qualified to hold a lease under said sections", as that term is used in Section 17 of the Act. He argues that, since the Act did not specifically exclude relinquishing lessees from applying for new leases on the same land, the Secretary could properly hold that such persons were qualified applicants. Respondent has made this argument with full knowledge that the practice employed by the relinquishing lessees permitted them to hold their leases beyond the ten-year statutory period without

producing oil or gas and, thus, emasculate the basic purpose of the Act.[1]

This narrow interpretation of the statute sharply points up the significance of this case in the interpretation of statutes by administrative agencies. The Supreme Court has laid down the mandate that an administrative agency must interpret one provision of a statute together with other provisions and the purpose of the Act (Petition, p. 10). Petitioner has shown that the provisions in Section 17 relating to the time that a lessee may hold a lease, absent oil or gas production, must necessarily relate to and shape the meaning of "qualified", as used in Section 17. By looking solely to Section 1 and completely blinding himself to the other provisions limiting the time in which a lessee can hold a lease absent production of gas or oil—the heart of the Mineral Leasing Act—the Secretary has also blinded himself to the proper function of statutory interpretation and has made a mockery of the purpose of the Act.

II

Petitioner has not asked that an exception be made to the tract book rule. Rather, petitioner has asked that the tract book rule be applied in a way to assure petitioner and other applicants an equal opportunity to apply for leases. Respondent's claim that the Secretary's practice "has not been deemed to have operated unfairly"[2] is com-

[1] Respondent has admitted that this practice was resorted to in order to extend the time in which the land would remain under their control (Brief of Respondent, pp. 3-4). Respondent has not refuted the showing by Petitioner of the effect of this practice on the basic purpose of the Mineral Leasing Act (Petition, pp. 9-11).

[2] Respondent has sought to buttress this argument by pointing out that twenty-four of petitioner's applications were filed more than nineteen days after the date of notation on the tract book. This, however, is irrelevant, since, under the practice permitted by the Secretary, no matter how diligent petitioner may have been, he could not possibly have applied

pletely unwarranted, since the Court of Appeals found, in its decision, that, as a result of the practice permitted by the Secretary, "other potential applicants for the leases were thus effectively prevented from receiving notice that the leases were again open to public offering".

Respondent has argued that the relinquishing lessees complied with the rule as it stood and that petitioner has sought a retroactive substitution of a different regulation. This argument ignores the fact that the statutes and regulations clearly provided that a lessee could not hold a lease beyond the ten-year period unless he produced oil or gas. That is sufficient notice that they cannot resort to a brazen, devious practice [3] to avoid this requirement, and seek official sanction by a narrow interpretation of the statute and regulations.

Respectfully submitted,

CHESTER C. SHORE,
902 Warner Building,
Washington 4, D. C.,
Attorney for Petitioner.

---

prior to the relinquishing lessees. For petitioner to have been the first applicant under this practice, it would have required clairvoyance, rather than diligence.

Further, it requires time to examine land and to determine whether such land is desirable for leasing. That petitioner was not dilatory is borne out by the fact that the Secretary in his decision, could point only to the relinquishing lessees as persons who had applied prior to petitioner. In each case, petitioner was the next applicant.

[3] Respondent has characterized the practice permitted herein as one that presented "practical administrative problems". The use of such euphemistic language does not negate the fact that such practice not only denied petitioner and other applicants an opportunity to apply for the leases, but also permitted the relinquishing lessees to hold their leases beyond the ten-year period without producing oil or gas. This, therefore, presented more than practical administrative problems but, rather, presented a practice that went to the very basic purpose of the Mineral Leasing Act.